

K.S.A. 44-534a makes applicable to both claimant and respondent the specific criteria and procedures required to proceed to preliminary hearing for the purpose of

medical treatment and payment of temporary total disability compensation pre- and post-award. The original Award in this matter was written December 9, 1992. In that Award the claimant was granted future medical care upon proper application to the Administrative Law Judge.

Respondent's contention that the Administrative Law Judge was in violation of K.S.A. 44-528 is misplaced. No motion under K.S.A. 44-528 was filed in this matter. Instead, claimant filed an E-3 requesting benefits in the form of medical treatment and the authorization of Dr. Stacy Peterson.

K.S.A. 44-534a allows appeals from a preliminary hearing for the specific jurisdictional issues regarding whether claimant suffered accidental injury; whether the injury arose out of and in the course of the employee's employment; whether notice is given or claim timely made; or whether certain defenses apply. None of the above issues exist in this circumstance. K.S.A. 44-551 limits the rights of a party to appeal from a preliminary order to situations where it is alleged that the Administrative Law Judge exceeded the Administrative Law Judge's jurisdiction in granting or denying the relief requested at the preliminary hearing.

In this situation the Administrative Law Judge was fully empowered to grant post-award medical care and to appoint the authorized treating physician for said care. The Administrative Law Judge further has the jurisdiction to grant temporary total disability benefits if the claimant is taken off work by the authorized treating physician. The Administrative Law Judge is allowed under K.S.A. 44-536 to grant post-award attorney fees to the claimant if the proper criteria is met.

As it has not been shown the Administrative Law Judge exceeded her jurisdiction in ordering benefits for the claimant, the Appeals Board finds that it does not have the jurisdiction to entertain this appeal from a preliminary order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the October 11, 1994, Order of Administrative Law Judge Nelsonna Potts Barnes remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of December, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: James Zongker, Attorney at Law, Wichita, KS
Anton C. Andersen, Attorney at Law, Kansas City, KS
Nelsonna Potts Barnes, Administrative Law Judge
George Gomez, Director